

June 29, 2016

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: Notice of Ex Parte Presentation, MB Docket 16-42, CS Docket 97-80

On June 27<sup>th</sup>, Gene Kimmelman of Public Knowledge; Ellen Stutzman, Marvin Vargas and Corinna Freedman on behalf of Writers Guild of America, West; Michael Scurato of National Hispanic Media Coalition and Matt Wood of Free Press (collectively, the “Groups”) met with Gigi Sohn, Jessica Almond, and Louisa Terrell of Chairman Wheeler’s office; John Williams, OGC; and Scott Jordan, CTO, to discuss the Groups’ views on the FCC’s navigation device proceeding. Specifically, we discussed the recent proposal from some MVPDs and programmers on a so-called apps-based approach.

The Groups initially expressed skepticism on some of the details of the MVPD proposal, given past cable promises for support for third-party devices, and past cable technical initiatives (such as Tru2way) that fell short of promoting true competition and innovation. In particular, the MVPD proposal does not guarantee that users would be able to access the same video programming on apps as on first-party MVPD devices (which would fall short of the statute). It allows MVPDs to deliver programming to apps over broadband (which could count against their data caps or result in lesser quality). Additionally, as described, it does not allow for home recording or device-shifting, and limits how third-party device manufacturers can differentiate themselves in the marketplace through competitive user interfaces and features.

The Groups also explained that the precise mechanism by which MVPDs propose to provide such apps to diverse hardware and software platforms, and the technical specifics of such apps, remain unclear. So does the impact of such an approach on the millions of consumers who today rent devices from their pay-TV providers and who may not transition away from such rentals immediately.

Moreover, the Groups expressed skepticism about the benefits of such an apps-based approach for independent and diverse video content creators not already part of the cable TV lineup. These independent artists and producers, including especially women and people from different racial and ethnic backgrounds, have traditionally been marginalized or shut out entirely from cable TV lineups. They would benefit from open standards, device and application competition, and other hallmarks of a more level playing field for video. The ability of an apps-based approach to promote such results is unclear at best so long as incumbent video providers continue to exert undue control over the user interface.

We also suggested that, at least in our understanding of the somewhat skeletal MVPD proposal, that document seems at least to recognize the need for binding

Commission rules; the desire of consumers to access MVPD programming on the device of their choice (not just devices that have special deals with particular MVPDs); and the importance for consumers of accessing MVPD programming from outside MVPD-controlled user interfaces through features such as a truly functional universal search.

In any case, the Groups also reiterated their support for FCC rule provisions to address any legitimate and specific copyright, privacy, and advertising-related concerns on the record.

Respectfully submitted,  
/s Gene Kimmelman  
*President & CEO*  
PUBLIC KNOWLEDGE